

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

Aquila, Inc., d/b/a Aquila	) Docket No. NG-0001
Networks ("Aquila", Omaha,	) Docket No. NG-0002
seeking a general rate increase	) Docket No. NG-0003
for Aquila's Rate Area One.	)
	)
Aquila, Inc., d/b/a Aquila	)
Networks("Aquila", Omaha, seeking	)
a general rate increase for	) SETTLEMENT AGREEMENT AND
Aquila's Rate Area Two.	) TARIFFS APPROVED
	)
Aquila, Inc., d/b/a Aquila	)
Networks ("Aquila", Omaha,	)
seeking a general rate increase	)
for Aquila's Rate Area Three.	) Entered: January 21, 2004

PROCEDURAL BACKGROUND

On May 30, 2003, the Nebraska Legislature passed the State Natural Gas Regulation Act, which provides for regulation of the rates and services of investor-owned natural gas utilities by the Nebraska Public Service Commission ("PSC" or "Commission"), Neb. Rev. Stat. §§ 66-1801 to 66-1857 (hereafter referred to as the "State Natural Gas Regulation Act" or "Act"). On June 25, 2003, the Commission issued an "Order Opening Docket and Seeking Public Comment," wherein, among other things, the Commission issued a "Rulemaking" proceeding and proposed several new administrative rules and regulations applicable to rate applications filed with the Commission or otherwise to implement the requirements set forth in the Act. Among the proposed Rules and Regulations was a requirement contained in Proposed Rule 004.0G1, which called for applicants in a general rate filing to submit pre-filed testimony in support of its rate application. The Commission's June 25, 2003 Rulemaking also contains several other rate application requirements. See, e.g., Proposed Rule and Regulation No. 157, amending Neb. Admin. Code., Title 291, Chapter 9. Pipeline and Common Carriers Rules and Regulations.

AQUILA'S RATE APPLICATIONS

On June 30, 2003, Aquila filed with the Nebraska Public Service Commission, an application for a permanent annual revenue increase of approximately \$9,896,036 or an overall annual revenue increase of 8.45 percent in Aquila's three Nebraska Rate Areas. Specifically, the annual revenue increase requested by Aquila for its Rate Area One was \$3,794,961. The

annual revenue increase requested by Aquila for its Rate Area Two was \$2,932,814. The annual revenue increase requested by Aquila for its Rate Area Three was \$3,168,261.

As noted in each Rate Application filed with the Commission on June 30, 2003, Aquila's last Rate Applications were filed pursuant to the requirements of the Municipal Natural Gas Regulation Act, Neb. Rev. Stat. §§ 19-4601 et. seq. (2003). Specifically, Aquila's last rate increase in Rate Area One was in 1996 and was based on a "test year" ending December 31, 1994. Aquila's last Rate Area Two rate increase was in 1999, based on a "test year" ending December 31, 1998. Aquila's last Rate Area Three rate increase was in 1999 based on a "test year" ending December 31, 1998.

The Commission retained the consulting services of GDS Associates to advise and otherwise assist the PSC with reviewing and analyzing Aquila's rate application. The law firm of Harding, Shultz & Downs was retained by the Commission to serve as the Public Advocate pursuant to the requirements of the Act. The Public Advocate engaged the firm of Dahlen, Berg & Co. to serve as its Consultants. The Public Advocate is hereinafter referred to as "PA." See Neb. Rev. Stat. §§ 66-1830 to 66-1835 (2003).

Each of Aquila's Rate Applications was published on July 2, 2003, in The Daily Record, and by Commission Rule, the 30-day protest and formal intervention period expired on August 1, 2003. Aquila has indicated that it provided notice of its rate applications to its customers in the form of bill inserts. Aquila has further indicated that it provided notice of its rate applications to leaders in each municipality served by Aquila through letters, phone contact or in person.

On August 19, 2003, the Commission issued its "Order Consolidating Applications For Purposes of Discovery and Hearing." The Commission determined that consolidation of the three Aquila rate application proceedings, i.e., NG-0001, NG-0002 and NG-0003, for the purposes of discovery and hearing would be in the interest of efficiency. The Commission stated that the rate areas would remain separated for ratemaking purposes as provided in the Act. See August 19, 2003 Consolidation Order at p. 2.

## INTERVENTIONS AND TESTIMONY

On July 8, 2003, the Commission issued an "Order Granting in Part Aquila's Request for Waiver of Proposed Rule 004.0G1 Pre-filed Testimony Requirement," wherein the Commission permitted Aquila until July 18, 2003, to file its Pre-filed Direct Testimony. On July 18, 2003, Aquila submitted its Direct Testimony.

The following parties timely filed Petitions for Formal Intervention: Cornerstone Energy, Inc. ("Cornerstone"); Metropolitan Utilities District ("M.U.D."); Kinder Morgan, Inc. ("Kinder Morgan"); and the Commission's Public Advocate. On August 19, 2003, the Nebraska Municipal Power Pool (NMPP) filed a Petition for Informal Intervention.

On August 19, 2003, the PSC issued its "Order Ruling on Petitions For Formal Intervention," determining that M.U.D. and Kinder Morgan would be granted Informal Intervenor status. All remaining petitions for Formal or Informal Intervention were granted by the PSC through the Commission's August 19, 2003 "Order Ruling on Petitions For Formal Intervention." NMPP was permitted to Intervene Informally by subsequent order of the Commission.

## PLANNING CONFERENCE - PROCEDURAL ORDER - DISCOVERY - TESTIMONY

The Commission held a Planning Conference on August 13, 2003. An order was entered August 19, 2003, establishing procedures and deadlines for discovery and other events.

Aquila and the PA engaged in extensive discovery: Aquila responded to approximately 276 PA formal data requests, and to 29 formal Commission information requests. The PA responded to 11 formal data requests from Aquila, and 13 formal Commission information requests.

On or before November 3, 2003, the PA and Cornerstone submitted their direct testimony regarding several contested issues within Aquila's general rate application proceeding. On November 13, 2003, M.U.D. filed a "Statement" as required by the Commission's August 19, 2003 Order Ruling on Petitions to Intervene and as required under Commission Rule 015.02B. On November 17, 2003, Aquila filed Rebuttal Testimony addressing issues raised in the direct testimony of the PA and Cornerstone.

On December 3, 2003, all evidence, including the testimony of Aquila, the PA and Cornerstone Energy; M.U.D.'s Statement; all responses to Commission Information Requests; and other exhibits were formally made part of the record in this proceeding. On the same date, the PA filed a Motion to Strike Parts of Aquila's Rebuttal Testimony. No motions to strike direct testimony of Aquila, the PA or Cornerstone were filed. Aquila filed a Motion to Strike the November 13, 2003 Statement of M.U.D. That Motion to Strike was overruled by the Commission's Hearing Officer on December 3, 2003, at the hearing on these proceedings. The PA's Motion to Strike Aquila testimony and Aquila's right to respond to the PA's Motion remained under advisement pending the Commission's approval, rejection, or modification of the Joint Stipulation and Agreement of Settlement referred to below. The parties have agreed that if the Commission approves such Joint Stipulation and Agreement of Settlement without modification, then the PA's Motion to Strike will be moot. The Motion to Strike would only become relevant if such Joint Stipulation and Agreement of Settlement is not approved as requested.

#### SETTLEMENT AGREEMENT

The Act specifically provides authority for the PA and other parties in a proceeding to enter into stipulations "as a means of improving the quality of resulting decisions in a highly technical environment and *minimizing the cost of regulation.*" Neb. Rev. Stat. § 66-1831 (2003 Supp.)

On December 24, 2003, Aquila, the Public Advocate, and Cornerstone filed a Joint Stipulation and Agreement of Settlement (hereafter referred to as "Settlement"). Informal Intervenor were provided copies of the Settlement prior to its filing. The Settlement proposes an annual revenue increase of \$6,172,000 be allocated over Aquila's three Nebraska Rate Areas as follows: Rate Area One - annual revenue increase of \$1,728,000; Rate Area Two - annual revenue increase of \$2,284,000; and Rate Area Three - annual revenue increase of \$2,160,000. In the Joint Stipulation and Agreement of Settlement, the parties to the Settlement state that the Settlement resolves all issues raised in the above-captioned rate proceedings and each party requests that the Settlement be approved expeditiously in its entirety, without condition or modification.

## COMMISSION DISCUSSION

As required by the State Natural Gas Regulation Act, the Commission must look to the terms of the Joint Stipulation and Agreement of Settlement (hereinafter referred to as the "Settlement Agreement") to determine whether the Settlement is reasonable in light of the whole record, consistent with law, and in the public interest. See, e.g., Neb. Rev. Stat. §66-1801 to §66-1857. Section 66-1825 of the Act sets forth specific statutory rate application review requirements, which the Commission has fully considered in this proceeding.

The Commission's consultants, GDS Associates, have reviewed and analyzed the settlement agreement. GDS Associates recommends approval of the settlement, as stated by the Affidavit of Ellen Blumenthal, a certified public accountant, who assisted the Commission throughout the rate case. Ms. Blumenthal has determined that the settlement is consistent with the provisions of the Act and is in the public interest.

The overall annual revenue increase requested by Aquila in its application for a permanent rate increase was approximately \$9,896,036 for an overall annual revenue increase of 8.45 percent in Aquila's three Nebraska Rate Areas. The proposed Settlement Agreement reflects an overall annual revenue increase of \$6.172 million, for an overall annual revenue increase of 5.27 percent, which is significantly below the overall annual revenue increase initially requested in the application filed by Aquila in this proceeding and below the amount currently being collected under interim rate authority granted by the State Natural Gas Regulation Act. Neb. Rev. Stat. § 66-1838(10)(b) (2003). The overall revenue requirements and the rate area allocations presented in the Settlement Agreement are supported by the documents contained in the complete record in this proceeding.

The Settlement Agreement also provides a rate design agreement. The proposed rates of Aquila's regulated natural gas customers are as follows:

RATE AREA	CUSTOMER CHARGE		COMMODITY CHARGE (per therm)	
	Residential	Commercial/ Energy Options	Residential	Commercial/ Energy Options
One	\$11.00	\$15.00	\$0.10967	\$0.12700
Two	\$11.00	\$15.00	\$0.11070	\$0.15922
Three	\$11.00	\$15.00	\$0.12177	\$0.15266

Hereafter the rates shown above are referred to as "settled rates" or "final rates."

The Commission, after examining the complete record of this proceeding, finds the proposed Settlement Agreement to be reasonable, consistent with law and in the public interest. The Settlement Agreement is approved.

Aquila also filed Tariff Sheets consistent with the Settlement, along with the Settlement Agreement. Those Tariff Sheets include the "final rates." The filed Tariff Sheets are in compliance with the Settlement Agreement, and are hereby approved to be effective February 1, 2004.

Aquila will be required to file a Refund Plan within 30 days from the effective date of a final order in these proceedings. That Refund Plan will include a proposal for refunding the differences between the interim rate revenue collected, which Aquila began collecting on October 1, 2003, and its final rates, which will be implemented effective February 1, 2004. Such Refund Plan will be subject to comment from Formal Intervenors and the Commission reserves the ability to receive evidence regarding such Refund Plan and to enter a subsequent order regarding such Refund Plan as hereafter provided in this order. This order shall be deemed to be "final" if no rehearing request is filed within 30 days after issuance of this order.

As noted in the Settlement Agreement, the Settlement is made pursuant to Nebraska law, the Agreement shall become binding on the parties upon its execution, and is intended to relate only to specific matters referenced therein. No party to the Settlement shall be deemed to have approved, accepted, agreed or consented to any ratemaking principle, any method of cost of service determination, any method of cost allocation, or the resolution of any specific issue that may underlie or be implied by the provisions of the Settlement Agreement (or the

Schedules attached thereto) or be prejudiced or bound thereby in any other current or future proceeding before the Commission.

This Settlement represents a negotiated settlement of the issues in this proceeding settled in a manner, which is in the public interest. The provisions of this Settlement are for the purposes of settlement only and are not intended to have any precedential effect.

#### RATE SCHEDULES AND TARIFF SHEETS

Public hearings on Aquila's rate application were held on Monday, December 1, and Wednesday, December 3, 2003. All parties to the proceeding, Informal Intervenor and other members of the public were provided an opportunity to present any issues or other concerns regarding the issues in this case and the settlement proposed by the parties. The Settlement Agreement requires that Aquila file Tariff Sheets in compliance with the Settlement Agreement. As part of those Tariff Sheets, Aquila's EnergyOptions Program will now memorialize the terms and conditions that apply in all of Aquila's rate areas. Under Aquila's previous Tariffs on file with the Commission, Aquila only had EnergyOptions Program Tariff Sheets on file for its Rate Area Two.

#### O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the Joint Stipulation and Agreement of Settlement filed by Aquila, Inc., d/b/a Aquila Networks; the Nebraska Public Advocate and Cornerstone Energy, Inc. as Formal Intervenor; and unopposed by Kinder Morgan, Inc., Metropolitan Utilities District, and Nebraska Municipal Power Pool, or any other Informal Intervenor to this proceeding, is approved.

IT IS FURTHER ORDERED that within 30 days from the date of this order, Aquila, Inc., d/b/a Aquila Networks, shall file a proposed Refund Plan consistent with the terms of the Settlement and this order for consideration by the Commission. The Public Advocate and Cornerstone Energy, Inc., as Formal Intervenor, shall retain the right to provide the Commission with comments within 10 days of the filing of Aquila's Refund Plan and the Commission reserves the ability to receive evidence with regard to Aquila's Refund Plan and to enter such further order with regard to Aquila's Refund Plan as may be appropriate.

IT IS FURTHER ORDERED that the Tariff Sheets filed with the Settlement Agreement are hereby accepted and approved in accordance with the terms of this order.

IT IS FURTHER ORDERED that all motions or objections not specifically ruled on by the Commission in this order or a previous order are overruled and denied.

IT IS FURTHER ORDERED that all filing and notice requirements of the Act have been fulfilled by the parties.

IT IS FINALLY ORDERED that this order constitutes the final decision of the Nebraska Public Service Commission in the above-captioned dockets with respect to all matters other than the Refund Plan or other ancillary matters required under the State Natural Gas Regulation Act.

Made and entered at Lincoln, Nebraska, this 21st day of January, 2004.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chairman

ATTEST:

Executive Director